

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **ROY C. "BILL" LEWELLEN**
Arkansas Bar ID #82093
CPC Docket No. 2007-056

FILED

SEP 24 2007

LESLIE W. STEEN
CLERK

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Marsha Warren of North Little Rock. The information related to the representation of Ms. Warren in 2002-2004 by Respondent Roy C. "Bill" Lewellen, an attorney practicing primarily in Marianna, Lee County, Arkansas. On May 23, 2007, Respondent was served with a formal complaint, supported by an affidavit from Ms. Warren.

In September 2002, Marsha Warren of North Little Rock employed Mr. Lewellen to represent her in her claim for injuries received when bitten by a dog owned by Matthew Holder on August 1, 2002, in south Texas. She did not recall ever signing a contract or agreement for legal services and had no copy of one, but recalled that Mr. Lewellen told her his fee would be 25% of any recovery. Thereafter she had contacts from time-to-time on her matter with Mr. Lewellen and with Gary Austin, an attorney who worked with him. She had increasing difficulty contacting Mr. Lewellen about her matter and obtaining information about its status. Her available long distance telephone records from November 2002- August 2004 show at least 121 calls to Mr. Lewellen's numbers in Marianna. Most of these were very short calls, in which she left a call back.

In frustration, Ms. Warren sent Mr. Lewellen a letter on May 11, 2004, terminating his services as her attorney and requesting the return of all her documents. The letter was sent certified mail and returned undelivered.

On September 23, 2004, Mr. Lewellen and Mr. Austin filed suit for her in the United States District Court in Helena, as No. 04-CV-173, against Matthew Holder, described as a resident of Texas. Service by mail was obtained on Mr. Holder. On October 29, 2004, Mr. Holder's attorneys filed a Motion to Dismiss and Brief, alleging lack of jurisdiction over him in Arkansas. On November 22, 2004, Ms. Warren's attorneys filed a Response to the Motion to Dismiss. She had always lived in North Little Rock, and did not live in any place that could be considered as in the Helena Division of the Eastern District of Arkansas, which is where Mr. Lewellen filed her lawsuit.

On November 27, 2004, she wrote Mr. Lewellen again, informing him she was terminating his services and to send her the file. The "green card" for certified mail was signed for on November 29, 2004. In spite of being terminated by her earlier, on December 7, 2004, her attorneys filed a motion to transfer her case to the United States District Court in the Southern District of Texas, Galveston Division. She was not consulted about this before they filed it. On December 21, 2004, her attorneys filed a Motion to Voluntarily Non-Suit her Arkansas case. She was not consulted about this action before it was taken. That Motion was granted by the Court's Order filed December 29, 2004. Ms. Warren only learned about this Order some time later.

After she learned of the "non-suit," and that it meant she had one year from December 29, 2004, within which to refile her case somewhere, and that it did not appear Mr. Lewellen was going to refile it in Arkansas or Texas, she sought a new attorney. No attorney she consulted

would take her case without a letter from Mr. Lewellen that he was no longer involved in it and that he would not claim a fee from it if a recovery was obtained.

Ms. Warren requested Mr. Lewellen return her file. As of the date of service of the complaint she had not received the file or a copy. She requested that Mr. Lewellen write a letter for her use that he no longer represented her and would claim no fee from her case, so she could try to engage another lawyer to handle this matter. She received no such letter.

In late October 2005, she filed a complaint against Mr. Lewellen with the Committee on Professional Conduct. On November 15, 2005, the Office of Professional Conduct wrote Mr. Lewellen about her complaint and situation. Mr. Lewellen did not respond to the letter.

In late 2005, Ms. Warren tried to contact the insurance carrier for the dog owner about settlement of her claim. By then they would not talk with her, probably because her case was "dead," not having been refiled within one year after the non-suit.

Mr. Lewellen responded to the Complaint that Ms. Warren was a long-time acquaintance, that he had little contact with her file, that Gary Austin, an associate in his office, was primarily responsible for it, that Mr. Austin filed the suit, and that he assumed Mr. Austin would file the suit in Texas where there would be no venue concerns. He stated that Mr. Austin left his office in 2005, and that Mr. Lewellen was out of the office a significant part of 2005 due to the effects of hepatitis.

Gary Austin submitted a rebuttal affidavit strongly disputing much of Mr. Lewellen's characterization of who did what with the Warren file. He stated that she was not his client, and that, not being licensed in Texas, he could not, and would not, have filed her lawsuit there.

Upon consideration of the formal complaint and attached exhibit materials, the response

to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Mr. Lewellen's conduct violated Model Rule 1.1 in that he filed Ms. Warren's suit in the wrong state, as Mr. Holder was clearly a resident of Texas, the act complained of occurred there, and jurisdiction clearly was in Texas. He filed a motion to transfer Ms. Warren's suit from federal court in Arkansas to the appropriate federal court in Texas, and then failed to follow through on the crucial transfer. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Lewellen's conduct violated Model Rule 1.3 in that, after non-suiting Ms. Warren's case in December 2004, he failed to take action to refile it in the appropriate court in Texas. After non-suiting Ms. Warren's Arkansas case in December 2004, he failed to represent her in her claim against Mr. Holder. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Lewellen's conduct violated Model Rule 1.4(a) in that during 2003-2004 he failed to keep Marsha Warren reasonably informed about her legal matter, in spite of her calling his office numbers seeking information at least 121 times during this period. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

D. Mr. Lewellen's conduct violated Model Rule 1.5(c) in that he failed to provide Ms. Warren with a copy of the required written contingent fee agreement in her matter he handled, if such a writing existed. Model Rule 1.5(c) provides that a fee may be contingent on the outcome

of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

E. Mr. Lewellen's conduct violated Model Rule 1.16(d) in that, in spite of her written and telephoned requests to his office in 2004 that he cease representing her and return her documents, he failed to do so, thereby failing to take steps reasonably necessary to protect her interests. Model Rule 1.16(d) requires that upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect the client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned.

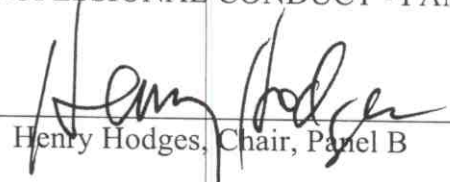
F. Mr. Lewellen's conduct violated Model Rule 8.4(d) in that he essentially abandoned his client Marsha Warren, after non-suiting her federal court case in December 2004, and not returning her file or releasing her so she could try to obtain the services of a new attorney to refile her suit, thereby limiting her ability to seek a judicial result for her injuries claimed from the 2002 dog attack. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **ROY C.**

"BILL" LEWELLEN, Arkansas Bar ID#82093, be, and hereby is, **REPRIMANDED** for his conduct in this matter, **FINED \$5,000.00**, and assessed Committee case costs of \$50.00. The fine and costs, totaling \$5,050.00, assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: _____


Henry Hodges, Chair, Panel B

Date: _____

